

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation )  
Against: )  
)  
)  
JOHN A. MARDONES, M.D. )  
)  
Physician's and Surgeon's )  
Certificate No. A41581 )  
)  
Respondent )  
\_\_\_\_\_ )**

**Case No. 800-2015-015387**

**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on March 1, 2018.**

**IT IS SO ORDERED: January 30, 2018.**

**MEDICAL BOARD OF CALIFORNIA**



**Kristina Lawson, JD, Chair  
Panel B**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 KAROLYN M. WESTFALL  
Deputy Attorney General  
4 State Bar No. 234540  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9465  
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **JOHN A. MARDONES, M.D.**  
15 **P. O. Box 2527**  
**Palm Springs, CA 92263-2527**

16 **Physician's and Surgeon's Certificate**  
17 **No. A41581,**

18 Respondent.

Case No. 800-2015-015387

OAH No. 2017080155

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
23 of California (Board). She brought this action solely in her official capacity and is represented in  
24 this matter by Xavier Becerra, Attorney General of the State of California, by Carolyn M.  
25 Westfall, Deputy Attorney General.

26 2. Respondent John A. Mardones, M.D. (Respondent) is represented in this proceeding  
27 by attorney Gary Wittenberg, Esq., whose address is: 1901 Avenue of the Stars, Suite 1750,  
28 Los Angeles, CA 90067.

3. On or about March 18, 1985, the Board issued Physician's and Surgeon's Certificate No. A41581 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-015387, and will expire on June 30, 2018, unless renewed.

4. On or about July 27, 2015, the Board issued a Decision and Order that became effective on or about August 26, 2015, in an action entitled, *In the Matter of the First Amended Accusation Against John A. Mardones, M.D.*, Medical Board of California Case No. 09-2012-227539, wherein Respondent's Physician's and Surgeon's Certificate No. A41581 was revoked, stayed, and placed on probation for three (3) years, subject to various terms and conditions.

## JURISDICTION

5. On June 13, 2017, Accusation No. 800-2015-015387 was filed against Respondent before the Board. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on June 13, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2015-015387 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-015387. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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1           8.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
2 every right set forth above.

3                                   **CULPABILITY**

4           9.     Respondent admits the truth of each and every charge and allegation in Accusation  
5 No. 800-2015-015387.

6           10.    Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
7 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
8 Disciplinary Order below.

9                                   **CONTINGENCY**

10          11.    This Stipulated Settlement and Disciplinary Order shall be subject to approval of the  
11 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be  
12 submitted to the Board for its consideration in the above-entitled matter and, further, that the  
13 Board shall have a reasonable period of time in which to consider and act on this Stipulated  
14 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully  
15 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation  
16 prior to the time the Board considers and acts upon it.

17          12.    The parties agree that this Stipulated Settlement and Disciplinary Order shall be null  
18 and void and not binding upon the parties unless approved and adopted by the Board, except for  
19 this paragraph, which shall remain in full force and effect. Respondent fully understands and  
20 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and  
21 Disciplinary Order, the Board may receive oral and written communications from its staff and/or  
22 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify  
23 the Board, any member thereof, and/or any other person from future participation in this or any  
24 other matter affecting or involving Respondent. In the event that the Board does not, in its  
25 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the  
26 exception of this paragraph, it shall not become effective, shall be of no evidentiary value  
27 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party  
28 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order

1 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any  
2 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this  
3 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

#### 4 **ADDITIONAL PROVISIONS**

5 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
6 be an integrated writing representing the complete, final and exclusive embodiment of the  
7 agreements of the parties in the above-entitled matter.

8 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,  
9 including copies of the signatures of the parties, may be used in lieu of original documents and  
10 signatures and, further, that such copies shall have the same force and effect as originals.

11 15. In consideration of the foregoing admissions and stipulations, the parties agree the  
12 Board may, without further notice to or opportunity to be heard by Respondent, issue and enter  
13 the following Disciplinary Order:

#### 14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A41581 issued  
16 to Respondent John A. Mardones, M.D. is revoked. However, the revocation is stayed and  
17 Respondent is placed on probation for three (3) years on the following terms and conditions, to  
18 run concurrent with the probationary term ordered in Medical Board of California Case No. 09-  
19 2012-227539:

20 1. **ALCOHOL - ABSTAIN FROM USE.** Respondent shall abstain completely from the  
21 use of products or beverages containing alcohol.

22 2. **BIOLOGICAL FLUID TESTING.** Respondent shall immediately submit to  
23 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
24 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
25 follicle testing, or similar drug screening approved by the Board or its designee. Prior to  
26 practicing medicine, Respondent shall contract with a laboratory or service approved in advance  
27 by the Board or its designee that will conduct random, unannounced, observed, biological fluid  
28 testing. The contract shall require results of the tests to be transmitted by the laboratory or

1 service directly to the Board or its designee within four hours of the results becoming available.  
2 Respondent shall maintain this laboratory or service contract during the period of probation.

3 A certified copy of any laboratory test result may be received in evidence in any  
4 proceedings between the Board and Respondent.

5 If Respondent fails to cooperate in a random biological fluid testing program within the  
6 specified time frame, Respondent shall receive a notification from the Board or its designee to  
7 immediately cease the practice of medicine. The Respondent shall not resume the practice of  
8 medicine until the final decision on an accusation and/or a petition to revoke probation is  
9 effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30  
10 days of the notification to cease practice. If the Respondent requests a hearing on the accusation  
11 and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within  
12 30 days of the request, unless the Respondent stipulates to a later hearing. If the case is heard by  
13 an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board  
14 within 15 days of submission of the matter. Within 15 days of receipt by the Board of the  
15 Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good  
16 cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its  
17 decision within 15 days of submission of the case, unless good cause can be shown for the delay.  
18 Good cause includes, but is not limited to, non-adoption of the proposed decision, requests for  
19 reconsideration, remands and other interlocutory orders issued by the Board. The cessation of  
20 practice shall not apply to the reduction of the probationary time period.

21 If the Board does not file an accusation or petition to revoke probation within 15 days of the  
22 issuance of the notification to cease practice or does not provide Respondent with a hearing  
23 within 30 days of such a request, the notification of cease practice shall be dissolved.

24 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
25 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
26 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.  
27 Respondent shall participate in and successfully complete that program. Respondent shall  
28 provide any information and documents that the program may deem pertinent. Respondent shall

1 successfully complete the classroom component of the program not later than six (6) months after  
2 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
3 time specified by the program, but no later than one (1) year after attending the classroom  
4 component. The professionalism program shall be at Respondent's expense and shall be in  
5 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

6 A professionalism program taken after the acts that gave rise to the charges in the  
7 Accusation, but prior to the effective date of the Decision will be accepted towards the fulfillment  
8 of this condition if the program would have been approved by the Board or its designee had the  
9 program been taken after the effective date of this Decision.

10 Respondent shall submit a certification of successful completion to the Board or its  
11 designee not later than 15 calendar days after successfully completing the program or not later  
12 than 15 calendar days after the effective date of the Decision, whichever is later.

13 4. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of  
14 this Decision, and on whatever periodic basis thereafter may be required by the Board or its  
15 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological  
16 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall  
17 consider any information provided by the Board or designee and any other information the  
18 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
19 designee. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

20 Respondent shall comply with all restrictions or conditions recommended by the evaluating  
21 psychiatrist within 15 calendar days after being notified by the Board or its designee.

22 A psychiatric evaluation required by the Board taken after the acts that gave rise to the  
23 charges in the Accusation, but prior to the effective date of the Decision will be accepted towards  
24 the fulfillment of this condition if the program would have been approved by the Board or its  
25 designee had the program been taken after the effective date of this Decision.

26 5. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the  
27 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board  
28 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician

1 who shall consider any information provided by the Board or designee and any other information  
2 the evaluating physician deems relevant and shall furnish a medical report to the Board or its  
3 designee. Respondent shall provide the evaluating physician with any information and  
4 documentation that the evaluating physician may deem pertinent.

5 Following the evaluation, Respondent shall comply with all restrictions or conditions  
6 recommended by the evaluating physician within 15 calendar days after being notified by the  
7 Board or its designee. If Respondent is required by the Board or its designee to undergo medical  
8 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the  
9 Board or its designee for prior approval the name and qualifications of a California licensed  
10 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent  
11 shall within 15 calendar days undertake medical treatment and shall continue such treatment until  
12 further notice from the Board or its designee.

13 The treating physician shall consider any information provided by the Board or its designee  
14 or any other information the treating physician may deem pertinent prior to commencement of  
15 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or  
16 its designee indicating whether or not the Respondent is capable of practicing medicine safely.  
17 Respondent shall provide the Board or its designee with any and all medical records pertaining to  
18 treatment that the Board or its designee deems necessary.

19 If, prior to the completion of probation, Respondent is found to be physically incapable of  
20 resuming the practice of medicine without restrictions, the Board shall retain continuing  
21 jurisdiction over Respondent's license and the period of probation shall be extended until the  
22 Board determines that Respondent is physically capable of resuming the practice of medicine  
23 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

24 A medical evaluation required by the Board taken after the acts that gave rise to the charges  
25 in the Accusation, but prior to the effective date of the Decision will be accepted towards the  
26 fulfillment of this condition if the program would have been approved by the Board or its  
27 designee had the program been taken after the effective date of this Decision.

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1           6.    NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)  
2 days of the effective date of this Decision, Respondent shall provide to the Board the names,  
3 physical addresses, mailing addresses, and telephone numbers of any and all employers and  
4 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's  
5 worksite monitor, and Respondent's employers and supervisors to communicate regarding  
6 Respondent's work status, performance, and monitoring.

7           For purposes of this section, "supervisors" shall include the Chief of Staff and Health or  
8 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff  
9 privileges.

10          7.    WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty  
11 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or  
12 its designee for prior approval as a worksite monitor, the name and qualifications of one or more  
13 licensed physician and surgeon, other licensed health care professional if no physician and  
14 surgeon is available, or, as approved by the Board or its designee, a person in a position of  
15 authority who is capable of monitoring the Respondent at work.

16          The worksite monitor shall not have a current or former financial, personal, or familial  
17 relationship with Respondent, or any other relationship that could reasonably be expected to  
18 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its  
19 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite  
20 monitor, this requirement may be waived by the Board or its designee, however, under no  
21 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

22          The worksite monitor shall have an active unrestricted license with no disciplinary action  
23 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms  
24 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth  
25 by the Board or its designee.

26          Respondent shall pay all worksite monitoring costs.

27          The worksite monitor shall have face-to-face contact with Respondent in the work  
28 environment on as frequent a basis as determined by the Board or its designee, but not less than

1 once per week; interview other staff in the office regarding Respondent's behavior, if requested  
2 by the Board or its designee; and review Respondent's work attendance.

3 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
4 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
5 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
6 be made to the Board or its designee within one (1) hour of the next business day. A written  
7 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
8 any other information deemed important by the worksite monitor shall be submitted to the Board  
9 or its designee within 48 hours of the occurrence.

10 The worksite monitor shall complete and submit a written report monthly or as directed by  
11 the Board or its designee which shall include the following: (1) Respondent's name and  
12 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)  
13 the worksite monitor's license number, if applicable; (4) the location or location(s) of the  
14 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the  
15 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;  
16 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can  
17 lead to suspected substance abuse by Respondent. Respondent shall complete any required  
18 consent forms and execute agreements with the approved worksite monitor and the Board, or its  
19 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

20 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)  
21 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior  
22 approval, the name and qualifications of a replacement monitor who will be assuming that  
23 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a  
24 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the  
25 monitor, Respondent shall receive a notification from the Board or its designee to cease the  
26 practice of medicine within three (3) calendar days after being so notified. Respondent shall  
27 cease the practice of medicine until a replacement monitor is approved and assumes monitoring  
28 responsibility.

1           8.    NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
2 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
3 Chief Executive Officer at every hospital where privileges or membership are extended to  
4 Respondent, at any other facility where Respondent engages in the practice of medicine,  
5 including all physician and locum tenens registries or other similar agencies, and to the Chief  
6 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
7 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
8 calendar days.

9           This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

10          9.    SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
11 NURSES. During probation, Respondent is prohibited from supervising physician assistants and  
12 advanced practice nurses.

13          10. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
14 governing the practice of medicine in California and remain in full compliance with any court  
15 ordered criminal probation, payments, and other orders.

16          11. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
17 under penalty of perjury on forms provided by the Board, stating whether there has been  
18 compliance with all the conditions of probation.

19          Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
20 of the preceding quarter.

21          12. GENERAL PROBATION REQUIREMENTS.

22          Compliance with Probation Unit

23          Respondent shall comply with the Board's probation unit.

24          Address Changes

25          Respondent shall, at all times, keep the Board informed of Respondent's business and  
26 residence addresses, email address (if available), and telephone number. Changes of such  
27 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
28 circumstances shall a post office box serve as an address of record, except as allowed by Business

1 and Professions Code section 2021(b).

2 Place of Practice

3 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
4 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
5 facility.

6 License Renewal

7 Respondent shall maintain a current and renewed California physician's and surgeon's  
8 license.

9 Travel or Residence Outside California

10 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
11 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
12 (30) calendar days.

13 In the event Respondent should leave the State of California to reside or to practice,  
14 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
15 departure and return.

16 13. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
17 available in person upon request for interviews either at Respondent's place of business or at the  
18 probation unit office, with or without prior notice throughout the term of probation.

19 14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
20 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
21 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
22 defined as any period of time Respondent is not practicing medicine as defined in Business and  
23 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
24 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
25 Respondent resides in California and is considered to be in non-practice, Respondent shall  
26 comply with all terms and conditions of probation. All time spent in an intensive training  
27 program which has been approved by the Board or its designee shall not be considered non-  
28 practice and does not relieve Respondent from complying with all the terms and conditions of

1 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
2 on probation with the medical licensing authority of that state or jurisdiction shall not be  
3 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
4 period of non-practice.

5 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
6 months, Respondent shall successfully complete the Federation of State Medical Boards's Special  
7 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
8 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
9 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

10 Respondent's period of non-practice while on probation shall not exceed two (2) years.

11 Periods of non-practice will not apply to the reduction of the probationary term.

12 Periods of non-practice for a Respondent residing outside of California will relieve  
13 Respondent of the responsibility to comply with the probationary terms and conditions with the  
14 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
15 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
16 Controlled Substances; and Biological Fluid Testing.

17 15. COMPLETION OF PROBATION. Respondent shall comply with all financial  
18 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
19 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
20 be fully restored.

21 16. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
22 of probation is a violation of probation. If Respondent violates probation in any respect, the  
23 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
24 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
25 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
26 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
27 the matter is final.

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17. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gary Wittenberg, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5 December 2017

  
JOHN A. MARDONES, M.D.  
Respondent

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1 I have read and fully discussed with Respondent John A. Mardones, M.D., the terms and  
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
3 I approve its form and content.

4  
5 DATED: 12-8-17

  
6 GARY WITTENBERG, ESQ.  
Attorney for Respondent

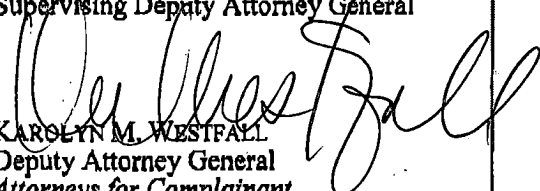
7  
8 **ENDORSEMENT**

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Medical Board of California.

11 Dated: 12/11/17

Respectfully submitted,

12 XAVIER BECERRA  
13 Attorney General of California  
14 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General

15   
16 KAROLYN M. WESTFALL  
17 Deputy Attorney General  
Attorneys for Complainant

18  
19  
20 SD2017704765

**Exhibit A**

**Accusation No. 800-2015-015387**



XAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
KAROLYN M. WESTFALL  
Deputy Attorney General  
State Bar No. 234540  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 738-9465  
Facsimile: (619) 645-2061

*Attorneys for Complainant*

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
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In the Matter of the Accusation Against:

Case No. 800-2015-015387

**JOHN A. MARDONES, M.D.**  
**P. O. Box 2527**  
**Palm Springs, CA 92263-2527**

**A C C U S A T I O N**

**Physician's and Surgeon's Certificate**  
**No. A41581,**

Respondent.

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about March 18, 1985, the Medical Board issued Physician's and Surgeon's Certificate No. A41581 to John A. Mardones, M.D. (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

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1       5.    Section 2234 of the Code, states, in pertinent part:

2               “The board shall take action against any licensee who is charged with  
3       unprofessional conduct. In addition to other provisions of this article,  
4       unprofessional conduct includes, but is not limited to, the following:

5               “(a) Violating or attempting to violate, directly or indirectly, assisting in or  
6       abetting the violation of, or conspiring to violate any provision of this chapter.  
7       [Chapter 5, the Medical Practice Act].

8               “...”

9       6.    Section 2236 of the Code states, in pertinent part:

10              “(a) The conviction of any offense substantially related to the qualifications,  
11       functions, or duties of a physician and surgeon constitutes unprofessional conduct  
12       within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The  
13       record of conviction shall be conclusive evidence only of the fact that the  
14       conviction occurred.

15              “...”

16              “(d) A plea or verdict of guilty or a conviction after a plea of nolo  
17       contendere is deemed to be a conviction within the meaning of this section and  
18       Section 2236.1. The record of conviction shall be conclusive evidence of the fact  
19       that the conviction occurred.”

20       7.    Section 2239 of the Code states:

21              “(a) The use or prescribing for or administering to himself or herself, of any  
22       controlled substance; or the use of any of the dangerous drugs specified in Section  
23       4022, or of alcoholic beverages, to the extent, or in such a manner as to be  
24       dangerous or injurious to the licensee, or to any other person or to the public, or to  
25       the extent that such use impairs the ability of the licensee to practice medicine  
26       safely or more than one misdemeanor or any felony involving the use,  
27       consumption, or self-administration of any of the substances referred to in this

28       ///

1 section, or any combination thereof, constitutes unprofessional conduct. The  
2 record of the conviction is conclusive evidence of such unprofessional conduct.

3 “(b) A plea or verdict of guilty or a conviction following a plea of nolo  
4 contendere is deemed to be a conviction within the meaning of this section. The  
5 Division of Medical Quality<sup>1</sup> may order discipline of the licensee in accordance  
6 with Section 2227 or the Division of Licensing may order the denial of the license  
7 when the time for appeal has elapsed or the judgment of conviction has been  
8 affirmed on appeal or when an order granting probation is made suspending  
9 imposition of sentence, irrespective of a subsequent order under the provisions of  
10 Section 1203.4 of the Penal Code allowing such person to withdraw his or her  
11 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
12 guilty, or dismissing the accusation, complaint, information, or indictment.”<sup>2</sup>

### 13 **FIRST CAUSE FOR DISCIPLINE**

#### 14 **(Use of Alcoholic Beverages to the Extent, or in a Manner, as to be Dangerous to** 15 **Respondent, Another Person, or the Public)**

16 8. Respondent has subjected his Physician’s and Surgeon’s Certificate No. A41581 to  
17 disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of  
18 the Code, in that he has used alcoholic beverages to the extent, or in such a manner, as to be  
19 dangerous or injurious to himself, another person, or the public, as more particularly alleged  
20 hereinafter:

21 9. On or about December 20, 2012, the Los Angeles County District Attorney filed a  
22 criminal complaint against respondent in the matter entitled, *The People of the State of California*

23 <sup>1</sup> California Business and Professions Code section 2002, as amended and effective January 1,  
24 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical  
25 Practice Act (Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical Board of California,” and  
references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other  
provision of law shall be deemed to refer to the Board.

26 <sup>2</sup> There is a nexus between a physician’s use of alcoholic beverages and his or her fitness to  
27 practice medicine, established by the Legislature in section 2239, “in all cases where a licensed physician  
28 used alcoholic beverages to the extent or in such a manner as to pose a danger to himself or others.”  
(*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407, 1411.)

1 v. *John Arthur Mardones*, Los Angeles County Superior Court Case No. 2JB10351. On or about  
2 June 27, 2013, respondent was convicted upon his plea of guilty to count one of the complaint,  
3 i.e., driving under the influence of alcohol in violation of Vehicle Code section 23152,  
4 subdivision (a). On or about July 31, 2013, the Superior Court sentenced respondent to probation,  
5 subject to various terms and conditions.

6 10. On or about July 4, 2015, at approximately 10:30 p.m., California Highway Patrol  
7 Officer B.L. (Officer B.L.) was on routine patrol when he witnessed respondent driving without a  
8 seat belt. Officer B.L. then initiated a traffic stop on the vehicle. As Officer B.L. spoke with  
9 respondent, he immediately noted respondent's eyes were bloodshot, and he smelled of alcohol.  
10 Respondent initially denied drinking any alcohol, but eventually admitted to drinking one vodka  
11 prior to driving.<sup>3</sup> Respondent provided two breath samples into a preliminary alcohol screening  
12 device, which registered his blood alcohol content to be 0.14 percent, and 0.12 percent,  
13 respectively.

14 11. After performing poorly on standardized field sobriety tests, Officer B.L. placed  
15 respondent under arrest on suspicion of driving under the influence of alcohol (DUI). At  
16 approximately 10:53 p.m., two breath samples were obtained from respondent, which registered  
17 his blood alcohol content to be 0.14 percent, and 0.14 percent, respectively.

18 12. Respondent was then transported and booked into the Kern County Sheriff's Jail.  
19 Respondent was then unable to report to work the next morning at 7:00 a.m. for his regularly  
20 scheduled shift in the emergency room at Tehachapi Hospital.

21 13. On or about July 24, 2015, the Kern County District Attorney filed a criminal  
22 complaint against respondent in the matter entitled, *The People of the State of California v. John*  
23 *Arthur Mardones*, Kern County Superior Court Case No. 76534TU. Count one of the complaint  
24 charged respondent with driving under the influence of alcohol, in violation of Vehicle Code  
25 section 23152, subdivision (a), a misdemeanor. Count two of the complaint charged respondent  
26 with driving while having a .08 percent or higher blood alcohol, in violation of Vehicle Code

27 <sup>3</sup> In his subject interview on or about March 7, 2017, respondent claimed to have consumed no  
28 more than two (2) vodka cranberry drinks prior to driving on or about July 4, 2015.

1 section 23152, subdivision (b), a misdemeanor. Both counts were charged with an allegation of a  
2 prior conviction of Vehicle Code section 23152, subdivision (a), within the meaning of Vehicle  
3 Code section 23540.

4 14. On or about October 4, 2016, respondent was convicted upon his plea of nolo  
5 contendere to an amended count three of the complaint, i.e., wet reckless, in violation of Vehicle  
6 Code section 23103, a misdemeanor. On or about November 2, 2016, the Superior Court  
7 sentenced respondent to probation for three years, subject to various terms and conditions.

8 15. On or about September 10, 2015, and at the request of the Board, respondent  
9 submitted to a comprehensive psychiatric evaluation, conducted by Nathan Lavid, M.D. (Dr.  
10 Lavid).<sup>4</sup> After a thorough and comprehensive evaluation, Dr. Lavid diagnosed respondent with  
11 Severe Alcohol Use Disorder.

12 16. In his subject interview on or about March 7, 2017, respondent admitted "Obviously I  
13 have an alcohol issue. I have an issue with alcohol. I mean, that's obvious."

#### 14 **SECOND CAUSE FOR DISCIPLINE**

##### 15 **(More than One Misdemeanor Conviction Involving the Use of Alcohol)**

16 17. Respondent has further subjected his Physician's and Surgeon's Certificate No.  
17 A41581 to disciplinary action under sections 2227 and 2234, as defined by section 2239,  
18 subdivision (a), of the Code, in that he has suffered more than one misdemeanor conviction  
19 involving the use of alcohol, as more particularly alleged in paragraphs 8 through 16, above,  
20 which are hereby incorporated by reference as if fully set forth herein.

#### 21 **THIRD CAUSE FOR DISCIPLINE**

##### 22 **(Conviction of a Crime Substantially Related to the Qualifications, 23 Functions, or Duties of a Physician and Surgeon)**

24 18. Respondent has further subjected his Physician's and Surgeon's Certificate No.  
25 A41581 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the  
26 Code, in that he has been convicted of a crime substantially related to the qualifications,

27 <sup>4</sup> Respondent was required to submit to this psychiatric evaluation as part of his disciplinary order  
28 in Medical Board of California Case No. 09-2012-227539.

1 functions, or duties of a physician and surgeon, as more particularly alleged in paragraphs 8  
2 through 17, above, which are hereby incorporated by reference and realleged as if fully set forth  
3 herein.

4 **DISCIPLINARY CONSIDERATIONS**

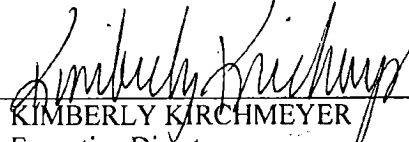
5 19. To determine the degree of discipline, if any, to be imposed on respondent John A.  
6 Mardones, M.D., complainant alleges that on or about August 26, 2015, the Board issued a  
7 Decision and Order in an action entitled, *In the Matter of the First Amended Accusation Against*  
8 *John A. Mardones, M.D.*, Medical Board of California Case No. 09-2012-227539. In that matter,  
9 and as a result of respondent's unprofessional conduct involving his DUI arrest on or about  
10 March 25, 2010, and his DUI arrest on or about October 13, 2012, and his DUI conviction on or  
11 about June 27, 2013, respondent's Physician's and Surgeon's Certificate No. A41581 was  
12 revoked, stayed, and placed on probation for three (3) years, subject to various terms and  
13 conditions.

14 **PRAYER**

15 WHEREFORE, complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Medical Board of California issue a decision:

- 17 1. Revoking or suspending Physician's and Surgeon's Certificate No. A41581, issued to  
18 respondent John A. Mardones, M.D.;
- 19 2. Revoking, suspending or denying approval of respondent John A. Mardones, M.D.'s  
20 authority to supervise physician assistants and advanced practice nurses;
- 21 3. Ordering respondent John A. Mardones, M.D., if placed on probation, to pay the  
22 Board the costs of probation monitoring; and
- 23 4. Taking such other and further action as deemed necessary and proper.

24 DATED: June 13, 2017

25   
26 KIMBERLY KIRCHMEYER  
27 Executive Director  
28 Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant